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APR 26 2005

OFFICE OF PETITIONS

In re Patent No. 6,790,490 :
Oiso et al. : DECISION ON REQUEST
Application No. 10/018,851 : FOR RECONSIDERATION OF
Filed: December 17, 2001 : PATENT TERM ADJUSTMENT
Attorney Docket No. 576P043 : and
: NOTICE OF INTENT TO ISSUE
: CERTIFICATE OF CORRECTION

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT," filed September 10, 2004. Patentees request that the patent term adjustment indicated on the Notice of Issuance (and in the patent) be corrected from zero (0) days to sixty-one (61) days.

The request for reconsideration of the patent term adjustment indicated in the patent is **GRANTED** to the extent indicated herein.

The patent term adjustment indicated in the patent is to be corrected by issuance of a certificate of correction showing a revised Patent Term Adjustment of **thirteen (13)** days.

On September 14, 2004, the above-identified application matured into U.S. Patent No. 6,790,490. The instant request for reconsideration filed September 10, 2004 was timely filed within 2 months of the date the patent issued. See § 1.705(d). The patent issued with a revised Patent Term Adjustment (PTA) of 0 days. The initial determination of PTA of 61 days was reduced by 93 days for applicants' submission of a paper styled

"STATEMENT OF SUBSTANCE OF INTERVIEW" filed June 14, 2004.
Patentees dispute this reduction.

Patentees' arguments are well-taken. By Official Gazette Notice dated June 26, 2001, the Director has advised applicants and patentees that the filing after the mailing of a Notice of Allowance of a response to the examiner's reasons for allowance will not be considered a "failure to engage in reasonable efforts" to conclude processing or examination of an application and will not result in reduction of a patent term adjustment pursuant to 37 CFR 1.704(c)(10) *Clarification of 37 CFR 1.704(c)(10) - Reduction of Patent Term Adjustment for Certain Types of Papers Filed After a Notice of Allowance*, 1247 OG 111 (June 26, 2001). A review of the application record reveals that the reduction of 93 days was based on the filing of a paper styled "STATEMENT OF SUBSTANCE OF INTERVIEW." This paper is not identified as one of the papers the filing of which the Director has specifically deemed not to be a failure to engage in reasonable efforts within the meaning of § 1.704(c)(10). Nonetheless, under the circumstances of this case, it is concluded that applicants' filing of an Interview Summary after an Examiner's Interview Summary first mailed with the notice of allowance is not a failure to engage within the meaning of § 1.704(c)(10). Thus, it is concluded that the reduction of 93 days is not warranted.

However, a review of the record reveals that the period of reduction of 28 days entered for applicant delay in filing a response to the final Office action mailed December 3, 2003 is incorrect. As the amendment filed March 31, 2004 was not in compliance with § 1.113(c)¹, the period for reply to the final rejection continued to run. The proper reply, a Notice of Appeal, was not received in the Office until May 18, 2004. Pursuant to § 1.704(b), the patent term adjustment should have been reduced by 76 days for applicant delay from March 4, 2004 to May 18, 2004 in filing a proper reply to the final rejection.

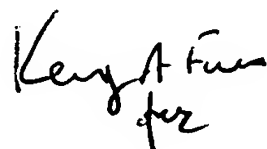
In view thereof, the patent term adjustment indicated in the patent should have been thirteen **(13)** days.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

¹ See Advisory Action mailed April 26, 2004.

The application file is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction in order to rectify this error. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **THIRTEEN (13)** days.

Telephone inquiries specific to this decision should be directed to Nancy Johnson, Senior Petitions Attorney, at (571) 272-3219.

A handwritten signature in black ink, appearing to read "Karin Ferriter" with a stylized flourish at the end.

Karin Ferriter
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
for Patent Examination Policy

Enclosure: DRAFT certificate of correction